

FILED

JUN 16 2006

**CATHY A. CATTERSON, CLERK
U.S. COURT OF APPEALS**

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

JOSE AGUIRRE JIMENEZ,

Petitioner,

v.

ALBERTO R. GONZALES, Attorney
General,

Respondent.

No. 04-71792

Agency No. A76-868-617

MEMORANDUM^{*}

On Petition for Review of an Order of the
Board of Immigration Appeals

Submitted June 12, 2006^{**}

Before: KLEINFELD, PAEZ and BERZON, Circuit Judges.

Jose Aguirre Jimenez, a native and citizen of Mexico, petitions for review of an order of the Board of Immigration Appeals (“BIA”) summarily affirming an immigration judge’s (“IJ”) order denying his application for cancellation of

^{*} This disposition is not appropriate for publication and may not be cited to or by the courts of this circuit except as provided by 9th Cir. R. 36-3.

^{**} The panel unanimously finds this case suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

removal. We have jurisdiction under 8 U.S.C. § 1252. We review de novo claims of constitutional violations, *Torres-Aguilar v. INS*, 246 F.3d 1267, 1271 (9th Cir. 2001), and we deny the petition for review.

Because the notice to appear was served when suspension of deportation relief was no longer available, Aguirre Jimenez was properly placed in removal proceedings. *See Jimenez-Angeles v. Ashcroft*, 291 F.3d 594, 597 (9th Cir. 2002). Moreover, Aguirre Jimenez's contention that the Illegal Immigration Reform and Immigrant Responsibility Act is impermissibly retroactive is without merit. *See id.* at 601-02.

Aguirre Jimenez's contention that the case must be remanded for the BIA to clarify the basis of its decision is unavailing. The IJ denied cancellation on the sole ground that Aguirre Jimenez failed to establish ten years of continuous physical presence. *See Lanza v. Ashcroft*, 389 F.3d 917, 932 (9th Cir. 2004) (compelling remand with instructions to clarify where BIA summarily affirms an IJ decision that is based on both reviewable and non-reviewable grounds).

Aguirre Jimenez's contention that the BIA's streamlined decision was conclusory and failed to offer a reasoned explanation is foreclosed by *Falcon Carriche v. Ashcroft*, 350 F.3d 845, 850 (9th Cir. 2003).

PETITION FOR REVIEW DENIED.